

875—9.18(88) Arbitration or other agency proceedings.

9.18(1) An employee who files a complaint under Iowa Code section 88.9(3) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board or the Iowa department of personnel. The commissioner's jurisdiction to entertain section 88.9(3) complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of the other agencies or bodies. The commissioner may file action in district court regardless of the pendency of other proceedings. However, the commissioner also recognizes the policy favoring voluntary resolution of disputes under proceedings in collective bargaining agreements. By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to section 88.9(3) complaints. Where a complainant is in fact pursuing remedies other than those provided by section 88.9(3), postponement of the commissioner's determination and deferral to the results of such proceedings may be in order.

9.18(2) Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under section 88.9(3) and those proceedings are not likely to violate the rights guaranteed by section 88.9(3). The factual issues in such proceedings must be substantially the same as those raised by a section 88.9(3) complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination.

9.18(3) A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicatory hearing thereof, the dismissal will not ordinarily be regarded as determinative of the section 88.9(3) complaint.